CASE NO. 5841 CRB-3-13-5 : COMPENSATION REVIEW BOARD
CLAIM NOS. 300095217, 30093892

AUGUSTIN CIRINO : WORKERS' COMPENSATION
CLAIMANT-APPELLANT COMMISSION

v. : MAY 12, 2014

UNITED PARCEL SERVICE
EMPLOYER

and

LIBERTY MUTUAL INSURANCE COMPANY
INSURER
RESPONDENTS/APPELLEES

APPEARANCES: The claimant was represented by David A. Leff, Esq., Levy, Leff & DeFrank, P.C., 129 Church Street, Suite 712, New Haven, CT 06510.

The respondents were represented by Lawrence R. Pellett, Esq., McGann, Bartlett & Brown, LLC, 111 Founders Plaza, Suite 1201, East Hartford, CT 06108.

This Petition for Review from the March 7, 2013 Finding and Dismissal of the Commissioner acting for the Third District was heard on November 22, 2013 before a Compensation Review Board panel consisting of Commission Chairman John A. Mastropietro and Commissioners Charles F. Senich and Peter C. Mlynarczyk.

OPINION

JOHN A. MASTROPIETRO, CHAIRMAN. The claimant has petitioned for review from the March 7, 2013 Finding and Dismissal of the Commissioner acting for the Third District. We find no error and accordingly affirm the decision of the trial commissioner.

The trial commissioner made the following factual findings which are pertinent to our review. The claimant, who has been employed by the respondent for twenty-eight years, alleges that he sustained a work-related injury to his back on April 1, 2011. The claimant filed a timely notice of the claim, and on May 23, 2011, the respondent filed a timely disclaimer. The claimant has performed various duties for the respondent employer, including sorting packages by transferring them from one conveyor belt to another. The claimant testified that on the date in question, he was sorting packages in the manner described when he felt a sharp pain in his back which went down his leg. The claimant alerted his nearest supervisor who in turn went to tell the business manager. The claimant testified that the supervisors then approached him about writing an accident report. He stated that, "I got a little mad and I told them I'll wait until my union steward gets here. And that's when they did the accident report and sent me to their doctor." January 25, 2012 Transcript, p. 11.

The claimant was seen by Chander E. Devaraj, M.D. at Concentra. In his report of April 1, 2011, Devaraj indicated:

> The mechanism of injury was lifting of a product and [patient] is vague and not very sure how it happened and states that some where between 5-7 am, he hurt his lower back. The pain is described as moderate and aching. The pain radiated to the left

> lower portion of the leg and the foot. Gives vague symptoms of rt leg pain.

Claimant's Exhibit A.

Devaraj, noting that the claimant's x-rays were unremarkable and his past medical history was "noncontributory," id., diagnosed the claimant as suffering from a lumbar strain. The doctor released the claimant to regular duty and recommended that the claimant take Aleve, apply ice to the area, and return to the clinic as needed.

The claimant denied that he gave the above-described history to Devaraj. He admitted that Devaraj had returned him to full duty and that he returned to the employer's facility after seeing Devaraj. He also admitted that he did not bring any written material back to the employer from the doctor. In addition, he admitted that he had refused to participate in an investigation into how he had hurt his back when he declined to be photographed at the work station where he had been injured.

The claimant next presented for medical treatment on April 5, 2011 with Durgadas Sakalkale, M.D. The doctor reported the following:

> The patient complains of pain in the low back and in the left buttock and posterior lateral thigh and leg. Patient describes the pain as moderate and throbbing. It started following bending and lifting boxes at work on 4/1. He works for UPS. He said that he has been having mild back pain for the last few weeks. He never had any leg pain. It got significantly worse after lifting the boxes on 4/1 and has been hurting since then. He has pain radiating to the left lower extremity, which he did not have before the incident.

Id.

The claimant denied having given Sakalkale the foregoing history.[1] Sakalkale diagnosed the claimant with a lumbar strain/sprain, spondylosis and lumbar radiculitis

[1] The claimant's testimony became a bit confusing at this juncture.

and recommended medications, physical therapy and exercise. He also released the claimant to "light work."

On April 26, 2011, the claimant again saw Sakalkale, at which time the doctor did not change his diagnosis or treatment plan. Sakalkale released the claimant to "Regular Duty Work" on May 2, 2011. Id. When the claimant saw Sakalkale on May 31, 2011, the doctor ordered an MRI, which was performed on June 13, 2011. The MRI demonstrated the following findings:

> Broad-based left subarticular disc protrusion at L3/L4 with potential compression of the left L4 nerve root in the left lateral recess. Mild disc bulge at L5-S1 but no significant compression of canal or neuroforamen.

Id.

Q: I'll show you Dr. Sakakale's [sic] office note dated [April] 5, 2011 Mr. Cirino, and show you specifically it says: He said that he has been having mild back pain for the last few weeks. Do you see that there?
A: Yes.
Q: And does that refresh your recollection about whether you told Dr. Sakakale that you had been having back pain?
A: I could have told him I was having pain, but I don't recall telling him a couple weeks because I always have back pain.
Q: So now you're admitting that you did have back pain --
A: I'm not admitting that, sir.
Q: Do you disagree that you told Dr. Sakakale that you had been having mild back pain for the last few weeks before April 1, 2011?
A: I was having back pain.
Q: So you're saying yes, you were?
A: I was having mild back pain. I did not say couple weeks, I was having back pain.
Q: Now are you saying you were having back pain on April 1, 2011?
A: On April 1, that's when I had the worse [sic] pain.
Q: Are you denying that you were having back pain before April 1, 2011?
A: No, I'm not denying that, sir.
Q: And are you denying that you told Dr. Sakakale that you were having back pain before April 1, 2011?
A: I'm not denying that, either.
Q: Pardon me?
A: I'm not denying that.
Q: So you admit it?
A: I'm not denying that, sir.
January 25, 2012 Transcript, pp. 18-19.

The claimant returned to Sakalkale on June 13, 2011, at which time the doctor diagnosed the claimant with degenerative disc disease and a herniated disc at L3-4 to the left. The doctor did not alter his conservative treatment except to order a lumbar corset. When the claimant returned to the doctor on August 22, 2011, the diagnosis and treatment remained the same, and the claimant reported his back brace was helpful. The claimant again saw Sakalkale on November 8, 2011, at that time complaining of pain which had worsened in the last two or three weeks with no history of any trauma or new injury. The diagnosis and treatment plan remained the same, and the doctor again prescribed physical therapy.

In none of Sakalkale's reports did there appear a reference to any prior back injuries. Similarly, in written reports generated by physical therapy sessions on April 12, 14, 19, 21 and May 3, 2011, there is no mention of a prior back injury. Moreover, there was no evidence that the claimant returned to physical therapy following the November visit with Sakalkale. The instant record contains no statement from Sakalkale regarding the etiology of the claimant's back pain; nor did Sakalkale opine as to the cause of the disc herniation seen on the MRI.

Eric Ford, the Lead Operations Supervisor for the UPS Orange facility (where the claimant allegedly sustained the injury), appeared on behalf of the respondents. Ford indicated that he was familiar with all of the jobs at UPS and has known the claimant for several years. Ford testified regarding an incident which occurred on November 30, 2011 whereupon the claimant agreed to perform an assignment delivering ground packages but later, while out with the UPS vehicle, refused to complete the assignment because it was heavy work and he thought he would get hurt if he did it. Ford also testified regarding

another incident on December 6, 2011 whereupon the claimant, during a phone discussion with Ford, stated that he would get hurt if he made his deliveries and would have to file a claim for a new injury. Ford indicated that he told the claimant to return to the facility; the claimant became belligerent and a subsequent discussion occurred involving the use of expletives but the claimant did eventually return. Ford testified that when the claimant arrived at the facility, "[i]n an aggressive manner he parked the car, screeched the tires, threw his DIAD device on the counter and got in my face and said nobody ever talks to me that way." Findings, ¶ 31; June 28, 2012 Transcript, p. 17.

Ford also testified that it is his responsibility to investigate work injuries, and that every complaint of pain on the job must be treated as a new injury. He indicated that he sent the claimant to Concentra on April 1, 2011 with the request that the claimant return with a note from the doctor. However, when the claimant returned, he did not bring any paperwork, and he made the following two statements: "I just walked out of there. You sent me to a walk in clinic, not a doctor" and "No, you're not going to take a picture of me, it's illegal." Findings, ¶ 32; June 28, 2012 Transcript, p. 20. Under cross-examination, when queried as to whether Ford took into account an employee's complaints of back pain when making job assignments, Ford replied, "I have to take into account whether the person has been examined by a physician and whether they are fit to do the duties required of them." Findings, ¶ 33; June 28, 2012 Transcript, p. 23. Ford also indicated that he "would be obliged to follow up with filing the injury prevention report and taking the person out of the job so he doesn't hurt himself further." Findings, ¶ 34; June 28, 2012 Transcript, p. 27. Ford testified that once a worker has been released to full duty, the worker will be called upon to work full duty, and if an employee is

experiencing a recurrent injury, "[t]hen maybe that person shouldn't be in that job if it's a come and go type of injury." Findings, ¶ 36; June 28, 2012 Transcript, pp. 28-29.

The claimant sustained a prior back injury on July 18, 1994 which was an accepted claim and resulted in a compromised three-percent permanent partial disability rating.[2] In a medical report attached to the Voluntary Agreement for that injury, the respondents' medical examiner, Paul Brown, M.D., noted that an MRI performed on September 15, 1994 demonstrated "a mild disc bulge at L5-S1 without foraminal narrowing or effacement of the thecal sac." Findings, ¶ 40; Claimant's Exhibit B. The trier also found this report "notable" because it stated the following: "1. the Claimant arrived with a cane but left it with a friend in the waiting room; 2. the Claimant exhibit [sic] all Waddell Signs in that he complained of inappropriate pain for which Dr. Brown gave several examples; 3. the doctor observed the Claimant when he left the office and he walked with no limp, carried his cane loosely with no weight on it, and got into the driver's side of his car with no difficulty." Findings, ¶ 39; Claimant's Exhibit B. Brown diagnosed the claimant with "[l]ow back syndrome with symptom magnification." Id.

The trial commissioner dismissed the instant claim, noting that "[g]iven the lack of a causation report from either Dr. Deveraj or Dr. Sakalkale, and a repeated diagnosis from Dr. Sakalkale of 'degenerative disc disease herniated disc' I cannot conclude the Claimant suffered an injury to his lumbar spine on April 1, 2011." Conclusion, ¶ G. In addition, the trier did not find credible the claimant's testimony regarding his injuries or his examinations with Devaraj and Sakalkale, remarking, "I cannot conclude that both

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[2] The three-percent permanent partial disability rating was derived from the five-percent rating assigned by John Shine, M.D., the claimant's treating physician, and the zero-percent rating assigned by Paul Brown, M.D., the respondents' medical examiner.

Dr. Sakalkale and Dr. Deveraj took an inaccurate history from the Claimant." Conclusion, ¶ A. Rather, the trier, noting that the claimant had "a history of symptom magnification from his earlier work injury of 1994," Conclusion, ¶ B, found the medical report of the respondents' medical examiner for this injury, Paul Brown, M.D., "reasonable, credible and persuasive regarding the Claimant's behavior." Id. The trier also observed that Sakalkale did not appear to be aware of the claimant's prior injury of 1994 and, as such, did not discuss the MRI results of 1994 or compare those results to those of the MRI ordered in 2011. Finally, the trier determined that the claimant had a "history of refusing work assignments due to his complaints of back pain," Conclusion, ¶ C, and "offered no testimony to refute the incidents of insubordination of November 30, 2011 and December 6, 2011." Conclusion, ¶ E.

The claimant filed a Motion to Correct, which the trier denied in its entirety save for a correction to Findings, ¶ 24, to reflect that Sakalkale had released the claimant to "Regular Duty Work" on May 2, 2011 rather than May 5, 2011. On appeal, the claimant asserts that the trial commissioner's "findings of fact and conclusions of law are inconsistent … [in that] there was direct, un-contradicted evidence of a back injury at work on April 1, 2011, and there was direct and un-contradicted evidence of a prior back injury in 1994…." Appellant's Brief, p. 5. As such, the trial commissioner's dismissal of the claim constituted error because the trier's "decision ignored the undisputed facts of the case, and the record contains <u>no evidence</u> on which the Commissioner could have relied on to deny the compensability of the April 1, 2011 back injury." (Emphasis in the original.) Id., at 6.

We begin our analysis with a recitation of the well-settled standard of deference we are obliged to apply to a trial commissioner's findings and legal conclusions.

> … the role of this board on appeal is not to substitute its own findings for those of the trier of fact. Dengler v. Special Attention Health Services, Inc., 62 Conn. App. 440, 451 (2001). The trial commissioner's role as factfinder encompasses the authority to determine the credibility of the evidence, including the testimony of witnesses and the documents introduced into the record as exhibits. Burse v. American International Airways, Inc., 262 Conn. 31, 37 (2002); Tartaglino v. Dept. of Correction, 55 Conn. App. 190, 195 (1999), *cert. denied*, 251 Conn. 929 (1999). If there is evidence in the record to support the factual findings of the trial commissioner, the findings will be upheld on appeal. Duddy v. Filene's (May Department Stores Co.), 4484 CRB-7-02-1 (October 23, 2002); Phaiah v. Danielson Curtain (C.C. Industries), 4409 CRB-2-01-6 (June 7, 2002). This board may disturb only those findings that are found without evidence, and may also intervene where material facts that are admitted and undisputed have been omitted from the findings. Burse, supra; Duddy, supra. We will also overturn a trier's legal conclusions when they result from an incorrect application of the law to the subordinate facts, or where they are the product of an inference illegally or unreasonably drawn from the facts. Burse, supra; Pallotto v. Blakeslee Prestress, Inc., 3651 CRB-3-97-7 (July 17, 1998).

McMahon v. Emsar, Inc., 5049 CRB-4-06-1 (January 16, 2007).

It is of course axiomatic that in order to successfully prosecute a claim for benefits pursuant to the Workers' Compensation Act, a claimant is required to demonstrate "that the injury is causally connected to the employment." Spatafore v. Yale University, 239 Conn. 408, 417 (1996). In order to establish the causal connection between the employment and the injury, a claimant "must demonstrate that the claimed injury (1) arose out of the employment, and (2) in the course of the employment…."[3]

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[3] Section 31-275(1) C.G.S. (Rev. to 2011) states that "'[a]rising out of and in the course of his employment' means an accidental injury happening to an employee or an occupational disease of an employee originating while the employee has been engaged in the line of the employee's duty in the

Sapko v. State, 305 Conn. 360, 371 (2012). Given that "[t]he determination of whether an injury arose out of and in the course of employment is a question of fact for the commissioner," id., at 418, it is equally well-settled that "the injured employee bears the burden of proof, not only with respect to whether an injury was causally connected to the workplace, but that such proof must be established by *competent evidence*." (Emphasis in the original.) Dengler, supra, at 447, *quoting* Keenan v. Union Camp Corp., 49 Conn. App. 280, 282 (1998). "'Competent evidence' does not mean any evidence at all. It means evidence on which the trier properly can rely and from which it may draw reasonable inferences." Dengler, supra, at 451. Thus, "[u]nless causation under the facts is a matter of common knowledge, the plaintiff has the burden of introducing expert testimony to establish a causal link between the compensable workplace injury and the subsequent injury." Sapko, supra, at 386.

Turning to the matter at bar, we note at the outset that the trier determined that the record is devoid of a medical causation report. Conclusion, ¶ G. Moreover, although the "History of Present Illness" section of the Concentra report of April 1, 2011 indicates that the claimant attributed the "mechanism of injury" to a lifting incident, the report also stated that the patient "was vague and not very sure how it happened...." Claimant's Exhibit A. Similarly, although the "Subjective" findings section of Sakalkale's note

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business or affairs of the employer upon the employer's premises, or while engaged elsewhere upon the employer's business or affairs by the direction, express or implied, of the employer…." "Proof that the injury arose out of the employment relates to the time, place and circumstances of the injury…. Proof that the injury occurred in the course of the employment means that the injury must occur (a) within the period of employment; (b) at a place the employee may reasonably be; and (c) while the employee is reasonably fulfilling the duties of the employment or doing something incidental to it." (Citation omitted.) Spatafore v. Yale University, 239 Conn. 408, 418 (1996), *quoting* McNamara v. Hamden, 176 Conn. 547, 550-551 (1979).

dated April 5, 2011 recites that the claimant reported that his back pain began after he was bending and lifting boxes at work, neither this note nor any subsequent notes from Sakalkale indicate that the claimant's condition occurred as a result of a work-related injury. In fact, in the "Assessment" section of the note of May 31, 2011, Sakalkale opined that the claimant was suffering from lumbar spondylosis. Moreover, even though Sakalkale, in his note of June 13, 2011 following an MRI performed on June 13, 2011,[4] stated that the claimant was suffering from a disc herniation at L3-4, neither this report nor any subsequent reports contain an opinion regarding the etiology of the claimant's complaints.

In addition to the problematic lack of expert evidence regarding causation, we also note that the trier concluded that the claimant's testimony was not fully credible, particularly with regard to the narrative provided to his physicians. For instance, the "History" section of the Concentra report of April 1, 2011 indicates that the claimant was "vague and not very sure" how his injury occurred; however, at trial the claimant testified that this statement was not true, that he had told the doctor how the injury occurred, and that he had "no idea where that information came from." January 25, 2012 Transcript, p. 17. Similarly, although Sakalkale's report of April 5, 2011 indicates that the claimant had reported "having mild back pain for the last few weeks," Claimant's Exhibit A, at trial the claimant testified that although he "could have" told Sakalkale he was

[4] The Whitney Imaging Center MRI report dated June 13, 2011 demonstrated a "[b]road-based left subarticular disc protrusion at L3/L4 with potential compression of the left L4 nerve root in the left lateral recess" and a "[m]ild disc bulge at L5-S1 but no significant compression of canal or neuroforamen." Claimant's Exhibit A.

experiencing back pain, he did not "recall telling him a couple weeks because I always have back pain."[5] January 25, 2012 Transcript, p. 18.

Conversely, the trial commissioner did find credible and persuasive the testimony of Eric Ford, the Lead Operations Supervisor at the UPS facility where the claimant was employed. Ford testified that the claimant, in contravention of employer policy, did not bring any paperwork back to the facility when he returned from Concentra on the date of the injury, instead stating that, "I just walked out of there. You sent me to a walk in clinic, not a doctor." Findings, ¶ 32. See also June 28, 2012 Transcript, p. 20. Ford indicated that the claimant also refused to allow himself to be photographed for purposes of the internal investigation, stating, "[n]o, you're not going to take a picture of me, it's illegal." Id. Ford also testified that on November 30, 2011, the claimant agreed to carry out a delivery assignment but later refused to complete the assignment because "it was heavy work and he would hurt himself if he did it." Findings, ¶ 29. See also June 28, 2012 Transcript, p. 15; Respondents' Exhibit 5. Similarly, on December 6, 2011, the claimant again refused to complete an assignment, stating that if he made the delivery he would get hurt and "would have to file a new injury." Findings, ¶ 30. See also June 28, 2012 Transcript, p. 16; Respondents' Exhibit 4. The trier found that the claimant "offered no testimony to refute the incidents of insubordination of November 30, 2011 and December 6, 2011." Conclusion, ¶ E.

It may be reasonably inferred that the trier's conclusions relative to Ford's credibility, as well as the credibility of the claimant, played a role in her decision to dismiss the claim. Such determinations are "uniquely and exclusively the province of the

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[5] See footnote 1, supra.

trial commissioner," Smith v. Salamander Designs, Ltd, 5205 CRB-1-07-3 (March 13, 2008) and, as such, are not subject to reversal on review.

> Credibility must be assessed . . . not by reading the cold printed record, but by observing firsthand the witness' conduct, demeanor and attitude . . . . An appellate court must defer to the trier of fact's assessment of credibility because [i]t is the [fact finder] . . . [who has] an opportunity to observe the demeanor of the witnesses and the parties; thus [the fact finder] is best able to judge the credibility of the witnesses and to draw necessary inferences therefrom . . . . As a practical matter, it is inappropriate to assess credibility without having watched a witness testify, because demeanor, conduct and other factors are not fully reflected in the cold, printed record.

Briggs v. McWeeny, 260 Conn. 296, 327 (2002). (Citations omitted; internal quotation marks omitted.)

In addition to the claim of error relative to the trier's failure to find compensable the injury of April 1, 2011, the claimant also asserts that in light of the "uncontradicted" evidence of the claimant's prior injury of 1994, the trial commissioner also erred by "failing to address whether Claimant's prior back condition was aggravated by the incident of April 1, [2011]…." Appellant's Brief, p. 6. The claimant asserts that the instant decision "overlooks a fundamental tenet of workers' compensation law, namely that an employer takes the employee in the state of health in which it finds the employee." Epps v. Beiersdorf, Inc., 41 Conn. App. 430, 435 (1996). The claimant seeks a remand on this issue, contending that such a remedy would be consistent with this board's decision in Kisson v. Shawmut National Bank, 4188 CRB-5-00-2 (March 16, 2001).

Section 31-349(a) C.G.S. allows a claimant suffering from a prior disability to receive compensation when the claimant "incurs a second disability from a second injury

resulting in a permanent disability caused by both the previous disability and the second injury which is materially and substantially greater than the disability that would have resulted from the second injury alone…."[6] Section 31-349 C.G.S. Nevertheless, it is axiomatic "that the question of whether an injury is a recurrence or a new injury is a factual determination for the trial commissioner." Hanzlik v. James Freccia Auto Body, 15 Conn. Workers' Comp. Rev. Op. 2, 5, 1984 CRB-7-94-3 (November 1, 1995), *aff'd*, 43 Conn. App. 908 (1996)(per curiam).

> The factual issue to be resolved is one of proximate cause. If the claimant's later symptoms occurred as an inevitable progression of the events set in motion by the earlier injury without any new intervening proximate cause, then the claimant's condition is a recurrence of the prior compensable injury…. If, on the other hand, an intervening event, such as an accidental injury definitely located as to the time and the place, has played a causal role in the claimant's subsequent incapacity, then a new injury, whether by aggravation of the prior injury or otherwise, has occurred.

Mellor v. Pleasure Valley Mobile Homes, 11 Conn. Workers' Comp. Rev. Op. 270, 271, 1393 CRB-2-92-3 (November 18, 1993) (internal citations omitted).

Turning to the matter at bar, it is clear from a review of Findings, ¶¶ 38, 39 and 40 that the trial commissioner was well aware of the claimant's prior injury of 1994. As such, the instant claimant is reasonably entitled to invoke the precept set forth in Epps, supra, that "an employer takes the employee in the state of health in which it finds the employee." Id., at 435. However, when considering whether the claimant's physical

[6] Section 31-349(a) (C.G.S.) (Rev. to 2011) states, in pertinent part: "The fact that an employee has suffered a previous disability, shall not preclude him from compensation for a second injury, nor preclude compensation for death resulting from the second injury. If an employee having a previous disability incurs a second disability from a second injury resulting in a permanent disability caused by both the previous disability and the second injury which is materially and substantially greater than the disability that would have resulted from the second injury alone, he shall receive compensation for (1) the entire amount of disability, including total disability, less any compensation payable or paid with respect to the previous disability, and (2) necessary medical care, as provided in this chapter, notwithstanding the fact that part of the disability was due to a previous disability."

complaints are an aggravation and thus compensable, the trier must determine whether the disability results either from "work activities that merely aggravate symptoms periodically produced by an existing condition [or] work activities that substantively worsen such a condition or the symptoms resultant from it." Kisson v. Shawmut National Bank, 4188 CRB-5-00-2 (March 16, 2001).

Our review of the evidentiary record before us indicates that at no time did any examining physician opine that the alleged injury of April 1, 2011 had "aggravated" the claimant's prior back injury of 1994. In fact, Devaraj, in the Concentra note of April 1, 2011, noted that the claimant's x-rays were unremarkable and his past medical history was "noncontributory." Claimant's Exhibit A. Moreover, on the basis of the evidence provided, the trier specifically found that Sakalkale neither knew of the claimant's prior injury nor compared the results of the 2011 MRI to the 1994 MRI. Conclusion, ¶ F. As such, this matter may be easily distinguished from Kisson, supra, in which an examining physician, noting that the claimant's workload had increased due to layoffs, opined that the claimant's recent work activities had aggravated her elbow symptoms to the extent that she finally elected to have surgery despite having been previously unwilling to undergo the procedure. Because this board determined that the trier's findings in Kisson did not reflect whether the trier had "considered the probable relevance of Epps to the set of facts before him," we remanded the matter. Given that, in the instant matter, the trier dismissed the claim because she could not conclude that the claimant had suffered any compensable injury to his lumbar spine in the incident of April 1, 2011, we find no merit in the claimant's request that this matter be remanded for an assessment of whether the

alleged injury of April 1, 2011 constituted an aggravation of the claimant's prior injury of 1994.

Finally, the claimant filed a Motion to Correct which the trier denied save for granting one correction to reflect the correct dates on which the claimant was released and returned to regular duty. Given that the balance of the corrections sought would seem to reflect the claimant's desire "to have the commissioner conform his findings to the [claimant's] view of the facts," D'Amico v. State/Department of Correction, 73 Conn. App. 718, 728 (2002), *cert. denied*, 262 Conn. 933 (2003), we find no error in the trial commissioner's denial of the Motion to Correct. "The [claimant] cannot expect the commissioner to substitute the [claimant's] conclusions for his own." Id.

There is no error; the March 7, 2013 Finding and Dismissal of the Commissioner acting for the Third District is accordingly affirmed.

Commissioners Charles F. Senich and Peter C. Mlynarczyk concur in this opinion.